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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/014,076
Filing Date: January 27, 1998
Appellant(s): FEDOR ET AL.

Ralph E. Jocke
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

Responsive to an applicant response on 5/19/06 following a remand of 9/15/05, a supplemental Examiner's Answer is set forth below:

Appellant may file another reply brief in compliance with 37 CFR 41.41 within two months of the date of mailing of this supplemental examiner's answer. Extensions of time under 37 CFR 1.136(a) are not applicable to this two month time period. See 37 CFR 41.43(b)-(c).

Responsive to the remand and the determination of a deficient 131 affidavit, a reiteration of the rejections remaining, prior art relied upon, and presentation of rejections remaining is included in Examiner's Answer.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

5,562,232	Pearson	10-1996 (priority 8-1991)
5,292,029	Pearson	3-1994 (filed 8-1991)
4,847,764	Halvorson	7-1989
5,883,806	Meador et al.	3-1999 (priority 9-1994)
5,377,864	Blechl et al.	3-1995 (3-1992 filing)

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Rejections evidenced by Pearson '029

Claims 48-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Pearson '029. Pearson '029 discloses:

(re: cl 48, as well as 38 per Pearson '232) placing at least one unit of a plurality of types of medical items in a plurality of storage locations, wherein each storage location holds only one type of medical item at a time (c 5 L 14-16); inputting patient identifying data through at least one data entry device, wherein the patient identifying data corresponds to a patient (c 5 L 14-21);

removing at least one unit of a type medical item from a storage location with a dispenser mechanism (c5 L 32-46);

modifying data in at least one data store through operation of at least one processor, wherein the at least one processor is in operative connection with the at least one data store, the data entry device and the dispenser mechanism, wherein the data is modified responsive to performance of steps (b) and (c) to include data representative of the dispense of the type medical item for the patient (c2 L 32-35; c 5 L 32-46);

(re: cl 49) receiving user identifying data from a user through at least one input device (c 5 L 14-21);

determining through operation of at least one processor that the user identifying data input in step (a) corresponds to authorized user data in at least one data store that is in operative connection with the at least one processor (c 5 L 14-21);

inputting patient identifying data through at least one input device in operative connection with the at least one processor, wherein the patient identifying data corresponds to a patient (c 5 L 14-21);

inputting medical item data corresponding to a type medical item through at least one input device in operative connection with the at least one processor (c 2 L 29-36);

providing access to at least one of the type medical item to the user from a storage device responsive to performance of at least one of steps (b) and (d) (5 L 22-46);

storing data in at least one data store in operative connection with the at least one processor indicating that the at least one of the type medical item has been provided for the patient (2 L 29-56);

(re: cl 50) step (e) includes dispensing the at least one of the type medical item from a dispenser device (c 5 L 22-46);

(re: cl 52) step (e) includes releasing the at least one of the type medical item from a device holding such type item (c 5 L 22-46).

Rejections evidenced by Pearson '232.

Claims 38-41, 43, and 45-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Pearson '232.

In furtherance of the citations to the CIP linked Pearson '029 ancestor as shown above

Pearson '232 further discloses:

(re: base of claims 39-47) A method for tracking and dispensing medical items comprising the steps of: placing at least one unit of a plurality of types of medical items in a plurality of storage locations, wherein each storage location holds only one type of medical item at a time (col. 3 L 22-39; c4 L 33-49);

inputting patient identifying data to a data entry device, wherein the patient identifying data corresponds to a patient (col. 2 L 27-34; col. 3 L 5-20);

removing one unit of a type medical item from a storage location with a dispenser mechanism (suction mechanism #12; col. 5 L 42-col. 6 L 2 ;col. 5 L 9-

35; fig 2); modifying a data store using a processor in operative connection with the data store, wherein the processor is in operative connection with the data entry device and the dispenser mechanism, wherein the data store includes data representative of the patient and data representative of the type medical item stored in the storage location (col. 6 L 18-23), and

wherein the data store is modified responsive to the removing step and the inputting step, to include data representative of the dispense of the type medical item for the patient (col. 3 L 5-20; col. 2 L 8-34);

(re: cl 39) the data store further includes data representative of a plurality of authorized users (col. 4 L 60-col. 5 L 8; plurality of nurses (col. 6 L 6-32);

and prior to the removing step further comprising the steps of: receiving user identifying data from a user through a user data entry device, determining with the processor whether the input user identifying data corresponds to data for an authorized user stored in the data store, wherein the processor operatively controls the dispenser device to enable performance of the removing step only when the input user identifying data corresponds to an authorized user (col. 4 L 60-col. 5 L 8);

(re:cl 40) wherein in the modifying step the data store is further modified to include data representative of a record that the authorized user determined in the determining step dispensed the type medical item (col. 6 L 6-32);

(re:cl 41) prior to the removing step further receiving user identifying data from a further user through the user data entry device and further determining with the processor whether the input user identifying data from the further user corresponds to data for an authorized user stored in the data store, other than the authorized user determined in the first determining step, and wherein the removing

step is enabled to be performed only when the data received in the receiving and further receiving steps corresponds to two different authorized users (col. 4 L 60-col. 5 L 8);

(re:cl 43) after the removing step further comprising the step of sensing with a verification sensor the dispense of the type medical item removed in the removing step, wherein the verification sensor is in operative connection with the processor, and wherein the modifying step is not performed if the dispense of the item is not sensed in the sensing step by the verification sensor in the sensing step (col. 5 L 9-47;#42);

(re:cl 45) the removing step includes opening an electronic lock drawer (col. 5 L 1-8);

(re: cl 46) wherein the removing step includes releasing one container from a magazine holding a plurality of containers (col. 3 L 22-39);

(re: cl 47) wherein the removing step includes opening a lock to enable access to a storage location (col. 5 L 1-8);

(re: cl 49) receiving user identifying data from a user through at least one input device (c 4 L 60-63);

determining through operation of at least one processor that the user identifying data input in step (a) corresponds to authorized user data in at least one data store that is in operative connection with the at least one processor (c4 L 60-63);

inputting medical item data corresponding to a type medical item through at least one input device in operative connection with the at least one processor (c 2 L 29-36);

providing access to at least one of the type medical item to the user from a storage device responsive to performance of at least one of steps (b) and (d) (5 L 1-35);

storing data in at least one data store in operative connection with the at least one processor indicating that the at least one of the type medical item has been provided for the patient (c 4 L 60-67);

(re: cl 50) dispensing the at least one of the type medical item from a dispenser device (c 5 L 1-35);

(re: cl 51) unlocking a drawer to enable access to the at least one of the type medical item (c3 L 22-61);

(re: cl 52) releasing the at least one of the type medical item from a device holding such type item (c 5 L 1-35)

(re: cl 53) opening the at least one lock to enable access to the storage location (c3 L 22-61).

Rejections premised upon combination of Pearson and Meador et al.

Claims 39-43 and 45-47, and 49-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearson '232 in view of Meador et al.. Pearson '232 discloses the elements previously discussed and further discloses: receiving manually input data (col. 4 L 60-col. 5 L 8; col. 3 L 5-20). Pearson '232 does not disclose receiving data read from an object. Meador et al. discloses: receiving data read from an object (col. 9 L 12-25). It would have been obvious to substitute the manual data of entry Pearson '232 with the object read data because read data entry is more accurate, faster, and less prone to human input error than manual entry as taught by Meador et al..

Rejections premised upon combination of Pearson and Blechl.

Claims 38-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearson '232 in view of Blechl et al. '864. Pearson '232 discloses the elements previously discussed but does not disclose: displaying and entering data via a touch screen; receiving data read from an object. Blechl et al. teaches: displaying and entering data via a touch screen (col. 4 L 20-38); receiving data read from an object (col. 4 L 3-19). It would have been obvious to display and enter data via a touch screen because a touch screen display is convenient and simple and easier to use than keyboards and takes up no more space than the monitor takes absent the touch screen feature as taught by Blechl et al. '864. It would have been obvious to read data from an object because read data entry is more accurate, faster, and less prone to human input error than manual entry as taught by Blechl et al. '864.

Rejections evidenced by Halvorson

Claims 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halverson. Halverson discloses:

(re: cl 48) placing at least one unit of a plurality of types of medical items in a plurality of storage locations, wherein each storage location holds only one type of medical item at a time (c 7 L 10-36);

removing at least one unit of a type medical item from a storage location with a dispenser mechanism (c 3 L 28-63);

modifying data in at least one data store through operation of at least one processor, wherein the at least one processor is in operative connection with the at least one data store, the data entry device and the dispenser mechanism, wherein the data is modified responsive to performance of steps (b) and (c) to include data representative of the dispense of the type medical item for the patient (c 5 L 3-25);

(re: cl 49) receiving user identifying data from a user through at least one input device (c 11 L 10 with c4 L 28-32);

determining through operation of at least one processor that the user identifying data input in step (a) corresponds to authorized user data in at least one data store that is in operative connection with the at least one processor (c4 L 27-32);

inputting patient identifying data through at least one input device in operative connection with the at least one processor, wherein the patient identifying data corresponds to a patient (c3 L 15-27);

unlock doors housing drawers of multiple medication type (c3 L 57-60);

inputting medical item data corresponding to a type medical item through at least one input device in operative connection with the at least one processor (c 5 L 35-65);

providing access to at least one of the type medical item to the user from a storage device responsive to performance of at least one of steps (b) and (d) (c 3 L 28-63);

storing data in at least one data store in operative connection with the at least one processor indicating that the at least one of the type medical item has been provided for the patient (c 5 L 31-6);

(re: cl 50) step (e) includes dispensing the at least one of the type medical item from a dispenser device (c 3 L 28-63);

(re: cl 51) unlocking the doors (*c3 L 57-60.*)

(re: cl 52) step (e) includes releasing the at least one of the type medical item from a device holding such type item (c 3 L 28-63);

(re: cl 53) opening the at least one lock to enable access to the storage location (c3 L 53-63).

Halverson does not inherently disclose but suggests (see Board's earlier position): inputting patient identifying data through at least one data entry device, wherein the patient identifying data corresponds to a patient (c10 L 1 –c11 L 6 inferred with patient id data). It is inferred and would have been obvious for Halverson to perform the steps associated with this hardware because the patient identifying data is tracked in the system and stored in the memory and the data needs entry to be placed within the system before tracking begins.

Halverson does not disclose: unlocking a drawer to enable access to the at least one of the type medical item, but as the system discloses patient drawers and unlocking doors, it would have been obvious for Halverson to unlock drawers as a means of controlling patient specific medications (Board decision in related appeal). As the drawer is behind the computer controlled lock door, it is well within the skill of one in the art to lock the drawer instead of the drawer covering it.

Response to Argument

The applicant's numerous arguments, newly raised upon appeal, have been fully considered but they are unpersuasive in overcoming the rejections.

131 Affidavit

Applicant has again identified R. Michael McGrady as a sole inventor of claims 38 and 48. As indicated by the Board in the remands, the declaration identifies five inventors as inventors of the instant application so the declaration is inconsistent with the affidavit.

Applicant has failed to identify the inventors of the claims of the application in order to rectify conflicts in the affidavit inventorship and the declaration inventorship raised by the Board.

As applicant has failed to properly identify the inventorship of the claims of the application in order to evaluate whether the applicants identified inventorship of claims 38 and 48 which were the subject of the 131 affidavit, the affidavit is not accepted per applicant's failure to identify the proper inventors in the affidavit.

However, as applicant's inventorship date in the affidavit was junior to the priority date of the Pearson '232 reference to which the affidavit was principally directed, the anticipatory rejection under Pearson '232 was maintained rather than withdrawn on claim 38 and asserted on claim 48 subsequent the filing of the prospective 131 affidavit. Accordingly, the Examiners Answer contained the rejection evidenced by Pearson '232 on the claims the affidavit addressed. Accordingly, as the affidavit did not affect the anticipatory rejection, the affidavit was essentially moot for the reasons previously set forth in the Examiner's Answer, and the case is in condition for consideration by the Board on the art independent of the affidavit.

Pearson '232 and'029

The applicant asserts a dispensing mechanism 35 of Pearson '232 is not found in Pearson '029. The dispensing mechanism of Pearson '029 at (col. 4 Line 67; fig 3 bottom for dispensing mechanism 35).

Applicant asserts medication in Pearson is only removed by hand, but a suction mechanism 12 is used to remove the medication (see fig 2).

Applicant asserts no verification step is performed, but data is modified responsive to removing step, no verification in applicant's claims, modification merely responsive to the step.

(re: cl 39) the data store further includes data representative of a plurality of authorized users (col. 4 L 60-col. 5 L 8)- password of nurse is a clear indication that there is an authorized user access requirement.

(Re: cl 40) Claim does not specify that the determination was verified via sensor, merely that the determination was done via some modifying step which may include the activation by the authorized user.

(re: cl 41) nurse and plurality of patients. The dispenser records which nurse requests the unscheduled medication (col. 6 L 8-23), there being no need to identify which nurse u unless a plurality of users were authorized. Under alternate interpretation of users, a plurality of patients are described.

(Re: cl 43) Sensor 42 detects presence and removal of pill at the output end of the dispensing channel. Additionally, sensor (c1 L 51-53, of incorporated by reference prior art) expressly identifies sensing whether medication dispensed.

(re: cl 46) device describes both dispensing of discrete doses and containers rather than discrete pill.

(re: cl 52) releasing the at least one of the type medical item from a device holding such type item (c 5 L 1-35); argues no release- the removal from the magazine through the tube is a release.

Pearson '029 and '232 clearly disclose recording data in the record keeping of patient scheduled and dispensed medication. Recording data in the computer comprises altering the data in memory. Further, data must be modified to generate the report data.

The recording of the medication dispensed name is evidence of plural types of medications.

The updating of dispensing records fits within applicants broad element of modification of the data.

Meador et al. and Blechl

Re: Meador et al. and Blechl, peripheral interfacing to CPU's has been a standard element of electrical engineering undergraduate curriculums since the late 1970's so modification to interface reading instruments such as bar code readers with a CPU is within the skill of any ordinary electrical engineer in the art.

Halvorson

Regarding the applicant's argument that Halverson does not explicitly unlock the drawers, the Board previously held it would have been obvious to perform the method steps associated with the apparatus hardware in the manner it was clearly intended comprising unlocking a drawer to enable access to the at least one of the type medical item, but as the system discloses patient drawers and unlocking doors, it would have been obvious for Halverson to unlock drawers as a means of controlling patient specific medications (Board decision in related appeal). Data store must be modified to generate the report data.

Applicant has argued his invention features data verification after a step. However, verifying is not claimed, merely performing the step. That an exemplary yet unclaimed embodiment may perform a task differently from the reference, is not at issue in these broad claims encompass both the reference and the claimed elements of the exemplary embodiment. Even if applicant had claimed

verification, the nurse in the Pearsons verifies the data with automation of at least some verification process well within the ordinary skill or one in the art.

Summary

Pearson '232 and '029 disclose a dispensing mechanism, modification of data, plurality of authorized users, dispensing sensors.

Pearson '232 discloses dispensing containerized medicaments Interfacing peripheral readers to CPU's are well within the skill of an electrical engineering in the art.

For the above reasons, it is believed that the rejections should be sustained.

Examiner Certifies Preceding Word Count: 3357; Line Count: 353.

Respectfully submitted,

Michael E. Butler

/M. E. B./

PATRICK MACKEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Extensions of time under 37 CFR 1.136(a) are not applicable to the **TWO MONTH** time period set forth above. See 37 CFR 1.136(b) for extensions of time

to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

A Technology Center Director or designee has approved this supplemental examiner's answer by signing below:

***

Katherine Matecki

APPROVED BY DIRECTOR
KATHERINE MATECKI